

APPENDIX B: INFORMATION TECHNOLOGY CONTRACT

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(INSERT PROJECT TITLE)
(INSERT CONTRACT NUMBER)

1. PARTIES

THIS CONTRACT is entered into by and between the State of Montana **(insert agency name)**, (hereinafter referred to as "the State"), whose address and phone number are **(insert address)**, **(insert phone number)**, and **(insert name of contractor)**, (hereinafter referred to as the "Contractor"), whose address and phone number are **(insert address)** and **(insert phone number)**.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Contract Term. This contract shall take effect on **(insert date)**, 20**()**, **(or upon contract execution)** and terminate on **(insert date)**, 20**()**, unless terminated earlier in accordance with the terms of this contract. (Section 18-4-313, MCA)

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in **(insert number)**-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not to exceed a total of **(insert number)** years, at the option of the State. **(State IT contracts generally may not exceed a total of 10 years.)**

3. COST/PRICE ADJUSTMENTS

Cost Increase by Mutual Agreement. After the initial term of this contract, each renewal term may be subject to a cost increase by mutual agreement.

OR

Cost Increase by Fixed Amount. After the initial term of this contract, each renewal term may be subject to a cost increase of **(insert %)** %, not to exceed **(insert %)** %, for the entire term of the contract.

OR

Pricing Adjustments Per Increase in CPI. Annual pricing adjustments to contract renewals following the contract term, if applicable, shall not exceed 75% the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (1982-1984 = 100; through November 1991 = 137.8), or any other index which may be substituted in the future. The CPI for the last 12-month period of this contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

OR

Price Adjustments Negotiated Based on Changes in Contractor's Costs. Price adjustments may be permitted at the time of contract renewal through a process of negotiation with the Contractor and the State. Any price increases must be based on **evidence of increases in the Contractor's costs for the same or similar products or services or** industry-wide or regional increases in the Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value. Such contract renewals are subject to the mutual agreement of the parties.

4. SERVICES AND/OR SUPPLIES

The Contractor agrees to provide to the State the following (insert a detailed description of the supplies, services, etc., to be provided to correspond to the requirements specified in Section 3, Scope of Project).

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration for the (insert supplies or services) to be provided, the State shall pay according to the following schedule: (insert pay schedule).

5.2 Withholding of Payment. The State may withhold disputed payments to the Contractor under the subject statement of work (or where no statement of work exists, the applicable contract) if the Contractor is in material breach of such statement of work (or applicable contract). Such withholding cannot be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, the State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. The Contractor is not relieved of its performance obligation in the event such payment is withheld.

6. ACCESS AND RETENTION OF RECORDS

6.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor, or their authorized agents access to any records required to be made available by 18-1-118 MCA, in order to determine contract compliance.

6.2 Retention Period. The Contractor agrees to create and retain records supporting the (insert services rendered or supplies provided) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation, or exception relating to this contract taken by the State of Montana or a third party.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

The Contractor shall not assign, transfer, or subcontract any portion of this contract without the express written consent of the State. (Section 18-4-141, MCA)

8. LIMITATION OF LIABILITY

The Contractor's liability for contract damages is limited to direct damages and further to no more than twice the contract amount. The Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount of damages.

Section 9 needs to be tailored to the project. Call SPB for assistance at (406)444-2575.

9. REQUIRED INSURANCE

(Insert for commercial general liability and automobile liability only)

9.1 General Requirements. The Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

(Insert for all insurance types)

9.2 Primary Insurance. The Contractor's insurance coverage with respect to the Contractor's negligence shall be primary insurance with respect to the State, its officers, officials, employees, and

volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(Insert for commercial general liability only)

9.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of (insert dollar amount) per occurrence and (insert dollar amount) aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

(Insert for automobile liability only.)

9.4 Specific Requirements for Automobile Liability. The Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

(Insert for professional liability only. Professional liability is typically not required for IT contracts; call SPB for assistance at (406)444-2575.)

9.5 Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of (insert dollar amount) per occurrence and (insert dollar amount) aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

(Insert for all insurance types)

9.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency, the **Contractor will elect to** either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

(Insert for all insurance types)

9.7 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than **B++** indicating compliance with the required coverages, has been received by the (insert agency name and address). The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require **certificates of insurance** policies at all times.

10. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of this contract. A renewal document must be sent to the (insert agency name and address), upon expiration.

11. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

The option to make ownership exclusive to the State may be considered in certain circumstances. Call SPB for assistance at (406) 444-2575.

12. INTELLECTUAL PROPERTY/OWNERSHIP

12.1 Mutual Use. All patent and other legal rights in or to inventions first conceived and reduced to practice, created in whole or in part under this contract, must be available to the State for royalty-free and nonexclusive licensing if necessary to receive the mutually agreed upon benefit under this contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use and authorize others to use copyrightable property created under this contract including all deliverables and other materials, products, modifications developed or prepared for the State by the Contractor under this contract or any program code, including site related program code, created, developed, or prepared by the Contractor under or primarily in support of the performance of its specific obligations hereunder, including manuals, training materials, and documentation (the "Work Product").

12.2 Title and Ownership Rights. The State shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "content"), but grants the Contractor the right to access and use content for the purpose of complying with its obligations under this contract and any applicable statement of work.

12.3 Ownership of Work Product. The Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

12.4 Copy of Work Product. The Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term or at the expiration or termination of all or part of the Contractor's performance hereunder, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or as of such expiration or termination, as the case may be.

12.5 Ownership of Contractor Pre-Existing Materials. Literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or rights thereto and derivatives thereof owned by the Contractor at the time this contract is executed or otherwise developed or acquired independent of this contract and employed by the Contractor in connection with the services provided to the State (the "Contractor Pre-Existing Materials") shall be and remain the property of the Contractor and do not constitute Work Product. The Contractor must provide full disclosure of any Contractor Pre-Existing Materials to the State

prior to its use and prove its ownership, provided, however, that if the Contractor fails to disclose to the State such Contractor Pre-Existing Materials, the Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 12.3** or as may be expressly agreed in any statement of work, the Contractor shall retain title to and ownership of any hardware provided by the Contractor.

13. PATENT AND COPYRIGHT PROTECTION

13.1 Third-Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify the Contractor. The Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at the Contractor's expense. The Contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim. Such indemnification will be conditional upon the following:

- a. the State will promptly notify the Contractor of the claim in writing; and
- b. the State will allow the Contractor to control, and will cooperate with the Contractor in the defense and any related settlement negotiations, provided that:
 - i. the Contractor will permit the State to participate in the defense and settlement of any such claim, at the State's own expense, with counsel of its choosing; and
 - ii. the Contractor shall not enter into or agree to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the State, its elected and appointed officials, agents or employees without the State's prior written consent.

13.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then the Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes noninfringing or replace it with one that is at least functionally equivalent. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State agrees to return the product to the Contractor on written request. The Contractor will then give the State a credit equal to the amount paid to the Contractor for the creation of the Work Product. This is the Contractor's entire obligation to the State regarding a claim of infringement. The State is not precluded from seeking other remedies available to it hereunder, including **Section 8**, and in equity or law for any damages it may sustain due to its inability to continue using such product.

13.3 Claims for Which Contractor is Not Responsible. The Contractor has no obligation regarding any claim based on any of the following except where the Contractor has agreed in writing, either separately or within this contract, to such use that is the basis of the claim:

- a. anything the State provided which is incorporated into a Work Product except:
 - i. where the Contractor knew (and the State did not know) such thing was infringing at the time of its incorporation into a Work Product but failed to advise the State; or
 - ii. where the claim would not have been brought except for such incorporation;
- b. the State's modification of a Work Product furnished under this contract;
- c. the use of a Work Product in a manner that could not be reasonably contemplated within the agreed upon scope of the applicable project; or
- d. infringement by a non-Contractor Work Product alone.

Section 14 is optional and if used must be tailored to the specific procurement. The following sample clauses are provided for consideration. Call SPB for assistance at (406) 444-2575.

14. CONTRACT PERFORMANCE ASSURANCE

14.1 Milestone Payments. Payments to the Contractor will be based on completion and acceptance of each milestone defined below.

14.2 Payment Holdbacks. ____ % will be withheld from each milestone payment. The total amount withheld will be paid to the Contractor at the completion and acceptance of the final milestone.

Milestone/Deliverable	Hold Back	Payment % of Total
Milestone 1:	____% of approved invoice	%
Milestone 2:	____% of approved invoice	%
Milestone 3:	____% of approved invoice	%
Milestone 4:	____% of approved invoice	%
Milestone 5:	____% of approved invoice	%
Final Acceptance		100%

An escrow agreement may be beneficial for some projects. Call SPB for assistance at (406) 444-2575.

14.3 Escrow.

Contract performance security may be used as a performance assurance tool. If used, an agency may choose to accept all forms of security or limit the security to surety bonds only. Call SPB for assistance at (406) 444-2575.

14.4 Contract Performance Security – All Forms Accepted. The Contractor must provide contract performance security based upon (insert %) % of the contract total.

The contract performance security must be provided by the Contractor in one of the following forms, within ten (10) working days from the Request for Documents Notice. ONLY THE FOLLOWING TYPES OF SECURITY ARE ACCEPTABLE AND MUST BE IN ORIGINAL FORM. FACSIMILE, ELECTRONIC, OR PHOTOCOPIES ARE NOT ACCEPTABLE. Personal or business checks are not acceptable.

- A sufficient bond from a surety company licensed in Montana with a Best's rating of no less than **B++** and supplied on the State of Montana's designated form entitled "Contract Performance Bond," found at <http://gsd.mt.gov/procurement/forms.asp>; or
- Lawful money of the United States; or
- An irrevocable letter of credit from a single financial institution and supplied on the State of Montana's designated form entitled "Irrevocable Letter of Credit," found at <http://gsd.mt.gov/procurement/forms.asp>; or
- A cashier's check, certified check, bank money order, bank draft, certificate of deposit, or money market certificate drawn, or issued by a federally or state-chartered bank or savings, and loan association that is insured by, or for which insurance is administered by the FDIC, or that is drawn and issued by a credit union insured by the National Credit Union Share Insurance Fund. Certificates of deposit or money market certificates will not be accepted as security for bid, proposal, or contract security unless the certificates are assigned only to the State. All interest income from these certificates must accrue only to the Contractor and not the State.

See Title 18, chapter 4, part 3, MCA; Title 30, chapter 5, MCA; and ARM 2.5.502.

The contract performance security must remain in effect for the entire term of this contract. A new surety bond or irrevocable letter of credit must be issued to the State of Montana if this contract is renewed.

The contract performance security in the form of a **(insert form)** has been provided to the following address: **(insert agency name and address)**.

OR

14.4 Contract Performance Security – Surety Bonds Only. The Contractor must provide contract performance security based upon 100% of the contract total. This security must be in the form of a surety bond licensed in Montana with a Best's rating of no less than **B++**. The surety bond must be supplied on the form designated by the State of Montana. The required form entitled "Contract Performance Bond," may be found at <http://gsd.mt.gov/procurement/forms.asp>. **THE ORIGINAL FORM MUST BE PROVIDED. FACSIMILE, ELECTRONIC, OR PHOTOCOPIES ARE NOT ACCEPTABLE.**

The contract performance security must be provided to the State of Montana within ten (10) working days from the Request for Documents Notice. This security must remain in effect for the entire term of this contract. A new surety bond must be issued to the State of Montana if this contract is renewed.

The original surety bond form has been provided to the following address: **(insert agency name and address)**.

15. CONTRACT OVERSIGHT

15.1 CIO Oversight. The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

15.2 Right to Assurance. If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform **or has refused to perform** or continue performing **all material obligations** under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand **(in no event less than five (5) business days)** may, at the State's option, be the basis for terminating this contract under the terms and conditions or other rights and remedies available by law or provided by this contract.

15.3 Stop Work Order. The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this contract shall be amended in writing accordingly.

16. CONTRACT TERMINATION

16.1 Termination for Cause. The State **or the Contractor** may, by written notice to the **other party**, terminate this contract in whole or in part at any time the **other party** fails to perform this contract pursuant to **Section 17, Event of Breach – Remedies.**

16.2 Bankruptcy or Receivership. Voluntary or involuntary bankruptcy or receivership by the Contractor may be cause for termination.

16.3 Noncompliance with Department of Administration Requirements. The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, the State will pay for products and services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this contract must be mutually agreed to by the parties.

16.4 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See section 18-4-313(4), MCA.)

Subsection 16.5 is optional.

16.5 Termination for Convenience. The State, by providing at least thirty (30) days prior written notice to the Contractor, may terminate for convenience this contract and/or any active projects at any time. In the event this contract is terminated for the convenience of the State, the agency will pay for all accepted work or services performed and accepted deliverables completed in conformance with this contract up to the date of termination.

17. EVENT OF BREACH – REMEDIES

17.1 Event of Breach. Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- a. products or services furnished by the Contractor fail to conform to any requirement of this contract; or
- b. failure to submit any report required by this contract; or
- c. failure to perform any of the other covenants and conditions of this contract, including beginning work under this contract without prior Department of Administration approval.

17.2 Actions in Event of Breach. Upon the occurrence of any material breach of this contract, either party may take either one, or both, of the following actions:

- a. give the breaching party a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater specification of time, thirty (30) days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the breaching party notice of termination; or
- b. treat this contract as materially breached and pursue any of its remedies at law or in equity, or both.

18. WAIVER OF BREACH

No failure by either party to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of either party to enforce each and all of the provisions hereof upon any further or other breach on the part of the breaching party.

19. STATE PERSONNEL

19.1 State Contract Manager. The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints, or any other issues regarding this contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

(Name):
(Address):
(City, State, ZIP):
(Telephone #):
(Cell Phone #):
(Fax #):
(E-mail):

Subsection 19.2 is optional depending on the circumstances. The State Project Manager may be designated in the statement of work instead of the contract.

19.2 State Project Manager. The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

(Name):
(Address):
(City, State, ZIP):
(Telephone #):
(Cell Phone #):
(Fax #):
(E-mail):

20. CONTRACTOR PERSONNEL

20.1 Identification/Substitution of Personnel. The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. The Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve the Contractor personnel assigned to work under this contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

20.2 Contractor Contract Manager. The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

(Name):
(Address):
(City, State, ZIP):
(Telephone #):
(Cell Phone #):
(Fax #):
(E-mail):

Subsection 20.3 is optional depending on the circumstances. The Contractor Project Manager may be designated in the statement of work instead of the contract.

20.3 Contractor Project Manager. The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

(Name):

(Address):

(City, State, ZIP):

(Telephone #):

(Cell Phone #):

(Fax #):

(E-mail):

21. MEETINGS AND REPORTS

21.1 Technical or Contractual Problems. The Contractor is required to meet with the State's personnel, or designated representatives, at no additional cost to the State, to resolve technical or contractual problems that may occur during the term of this contract. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of this contract.

21.2 Progress Meetings. During the term of this contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of this contract as required. At each such meeting, the Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by the Contractor, or of which the Contractor gained knowledge during the period since the last such status report, which may prevent the Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under this contract. The Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

21.3 Failure to Notify. In the event the Contractor fails to specify in writing any problem or circumstance that materially impacts the costs of its delivery hereunder, including a material breach by the State, about which the Contractor knew or reasonably should have known with respect to the period during the term covered by the Contractor's status report, the Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope; provided, however, that the Contractor shall be relieved of its performance obligations to the extent the acts or omissions of the State prevent such performance.

21.4 State's Failure or Delay. For a problem or circumstance identified in the Contractor's status report in which the Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by the Contractor. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

22. CONTRACTOR PERFORMANCE ASSESSMENTS

22.1 Assessments. The State may conduct assessments of the Contractor's performance. The Contractor will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

22.2 Record. Completed assessments may be kept on record at the State's Information Technology Services Division and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

23. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated for any reason, the Contractor must provide for a reasonable, mutually agreed period of time after the expiration or termination of this contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by this contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

25. SCOPE, AMENDMENT, AND INTERPRETATION

25.1 Contract. This contract consists of **(insert number)** numbered pages, any Attachments as required, RFP # **(insert RFP number)**, as amended, and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is as follows: 1) amendments to this contract, 2) this contract, 3) the applicable statement of work, 4) RFP # **(insert RFP number)**, as amended, and 5) the Contractor's RFP response, as amended.

25.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

26. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

(INSERT AGENCY NAME)
(Insert Address)
Insert City, State, Zip)

(INSERT CONTRACTOR'S NAME)
(Insert Address)
(Insert City, State, Zip)
FEDERAL ID #

BY: _____
(Name/Title)

BY: _____
(Name/Title)

(Signature)

(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

Legal Counsel (Date)

Approved as to Form:

Procurement Officer (Date)
State Procurement Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

Chief Information Officer (Date)
Department of Administration